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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)		Docket Number (Optional) AT9-93-110
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First named inventor: TIMOTHY M. SKERGAN

Application No.: 08/353,008

Art Unit: 2673

Filed: 12/09/1994

Examiner: MENGISTU, AMARE

Title: A METHOD AND SYSTEM FOR MANIPULATING A PLURALITY OF GRAPHICAL POINTERS

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ 1,500.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

has been filed previously on _____.
 is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ 1,400.00
 has been paid previously on _____.
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ 130.00 for a small entity or \$ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Date

BRIAN F. RUSSELL

Typed or printed name

40,796

Registration Number, if applicable

DILLON & YUDELL LLP

Address

(512) 343-6116

Telephone Number

8911 N. CAPITAL OF TEXAS HWY, SUITE 2110, AUSTIN, TX 78759

Address

Enclosures: Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

 Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300._____
Date_____
Signature_____
Typed or printed name of person signing certificate

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTORNEY DOCKET NO. AT9-93-110

**STATEMENT SUPPORTING PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present Application, which was filed December 9, 1994, was the subject of an Appeal to the Board of Patent Appeals and Interferences on September 24, 1997. A Decision on Appeal was mailed on June 19, 2001. At page 5 of the Decision on Appeal, the Board set forth a decision affirming the rejection of Claims 1-5 and 10-14 and reversing the rejection of independent Claim 6 and its dependent Claims 7-9. As a result, following the Decision on Appeal, Claims 1-5 and 10-14 remained under final rejection, and Claims 6-9 were in condition for allowance.

As set forth in MPEP 1214.06, entitled “Examiner Sustained in Whole or in Part,” when the Board renders a decision leaving claims allowed (in this case Claims 6-9), “The appellant is not required to file a reply. The examiner issues the application … on the claims which stand allowed” (emphasis supplied). The above-cited section of the MPEP further elucidates this procedure with the following example:

If the Board affirms a rejection of claim 1, claim 2 was objected to prior to appeal as being allowable except for its dependency from claim 1 and independent claim 3 is allowed, the examiner should cancel claims 1 and 2 and issue the application ... with claim 3 only.

Accordingly, in the present case, following the Decision on Appeal Applicant was not required to provide any reply to prosecute the present Application and was expecting to receive a Notice of Allowance on Claims 6-9.

Instead, Applicant received a Notice of Abandonment dated November 30, 2001, which stated that the present Application was abandoned in view of “[t]he decision by the Board of Patent Appeals and Interferences rendered on May 19, 2001 and because the period for seeking court review of the decision has expired and there are no allowed claims” (emphasis supplied). Given the error in both date and status, Applicant took no action in response to the Notice of Abandonment when received. However, Applicant had no intention to abandon the present application.

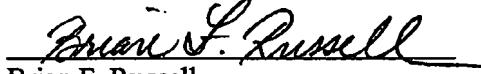
In March 2007, the inventor Timothy Michael Skergan queried IBM Patent Counsel Casimer K. Salys regarding the status of the present Application. In response to the inventor's query, Mr. Salys discovered that the present Applicant had become abandoned through a failure of the Examiner to follow the clear procedure set forth in the MPEP for handling applications having allowable claims following a decision on appeal. Mr. Salys thereafter immediately requested the undersigned to undertake revival of the present Application.

In preparing to the accompanying Petition to Revive, I have carefully reviewed the file wrapper of the present Application and find no notation or other evidence that Applicant ever intended to abandon the present Application. Applicant's consistent, clear intention in pursuing prosecution and Appeal of the present Application was to have a patent issue on allowable Claims 6-9. Consequently, as set forth in the accompanying Petition to Revive, the entire delay from the abandonment of the Applicant until the filing of the accompanying Petition to Revive was unintentional.

In support of the accompanying Petition to Revive, Applicant submits herewith a terminal disclaimer under 37 C.F.R. § 1.137, the fee for the terminal disclaimer, and authorization to charge the issue fee to Applicant's deposit account. As indicated in MPEP 1214.06, no further reply is required by Applicant.

Please charge any additional fees associated with the present Petition to Revive as well as any other fee necessary to further the prosecution of this Application to IBM Corporation Deposit Account 09-0447.

Respectfully submitted,



Brian F. Russell
Registration No. 40,796
DILLON & YUDELL LLP
8911 North Capital of Texas Hwy.
Suite 2110
Austin, Texas 78759
(512) 343-6116

ATTORNEY FOR APPLICANT